IN THE HIGH COURT OF HIMACHAL PRADESH SHIMLA

CWP No.630 of 2006

Reserved on 29.10.2007

Date of decision 7.11.2007

H.P.Dhiman Vishavakarma Samaj
Kalian Sabha (Regd.) Petitioner

Vs.

Union of India and others Respondents

Coram:

The Hon'ble Mr. Justice Rajiv Sharma, Judge.

Whether approved for reporting?[1] No.

For the Petitioner: Mr. Bhuvnesh Sharma and
Mr.Ramakant Sharma, Advocates.

For the respondents: Mr.Anup Rattan, Central Govt. Counsel, for respondents No.1 and 2.

Mr. M.S.Chandel, Advocate General, with Mr.Ashutosh Burathoki, Addl. Advocate General for respondent No.3.

Rajiv Sharma, J.

The brief facts necessary for the adjudication of this petition are that the petitioner Society is registered vide No.161/96. The Society hereinafter will be referred to as the 'petitioner' for brevity sake. The petitioner society has been constituted for the welfare of 'Tarkhan Community'. The endeavour of the petitioner is to include the 'Tarkhan Community' in the list of Scheduled Caste Order (Amendment) Act, 1976. The respondent No.3 has made a reference to the respondent No.2 on 15.2.2001 for the inclusion of Tarkhan category in the list of Scheduled

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[1] Whether reporter of local papers is allowed to see the judgment? No.

Caste. The category of Tarkhanh has already been included in the list of OBC vide a notification dated 9.8.2004. The Registrar General of India has turned down the proposal of the State Government vide a letter dated 1.12.2003. Similarly, the National Commission for Scheduled Caste vide a letter No.3/7/2004-SSW-V dated 7.10.2004 as also not agreed to the proposal for modifying the list of Scheduled Caste list of Himachal Pradesh by including 'Tarkhan' community.

Mr.Bhuvnesh Sharma, learned counsel appearing for the petitioner had strenuously argued that the decision of the Registrar General of India dated 1.12.2003 and of the National Commission for Scheduled Caste dated 7.10.2004 are contrary to the modalities worked out by it on 15.6.1999 as revised on 26.6.2002 for deciding the claim for inclusion and exclusion and other modifications in the lists of Scheduled Castes and Scheduled Tribes. Mr.M.S.Chandel, learned Advocate General, appearing for respondent No.3 submitted that the State Government had already favourably recommended the case for the inclusion of 'Tarkhan' community in the Scheduled Castes List of the State of Himachal Pradesh. Mr.Anup Rattan, learned Central Government Counsel appearing for respondents No.1 and 2 had supported the decision taken by the Registrar General of India as well as by the National Commission for Scheduled Castes.

I have heard the learned counsel for the parties and have also gone through the record of the case carefully.

The position which emerges from the aforesaid stated facts is that the State Government had sent a proposal to the respondent No.2 on 15.2.2001 for including 'Tarkhan' community in the list of Scheduled Caste Order (Amendment) Act, 1976. It is evident from the reply filed by respondents No. 1 and 2 that the Government of India has laid down detailed modalities on 15.6.1999 as revised on 22.6.2002 for deciding claims of inclusion and exclusion and other modifications in the lists of

Scheduled Castes and Scheduled Tribes. According to these modalities the first step for bringing change in the Scheduled Caste list by way of inclusion or exclusion is that the proposal is to be made by the concerned State Government and Union Territory Administration. The proposal is thereafter required to be agreed to by the Registrar General of India. If the Registrar General of India agrees with the proposal the same is further required to be agreed to by the National Commission for Scheduled Castes. Thereafter, the proposal of the State Government and the Union Territory Administration which has been agreed to by the Registrar General of India and National Commission for Scheduled Castes is put to Inter Ministerial consultation along with such proposals thereafter the approval of the Government is sought and if the Government of India approves such proposal a Bill incorporating such proposals is introduced before the Parliament for consideration and passing. The Registrar General of India has rejected the proposal and the relevant extract of its opinion reads thus:

> "Since, the term Tarkhan is more an occupational in nature applicable to two distinct Scheduled Castes (namely Badhi & Lohar) in most part of the State and at the same time, it is altogether a distinct caste (other than Badhi and Lohar) in three districts, Hamirpur, Una & Kangra, it is not appropriate to list out separately as a Scheduled Caste in the State or to consider synonymous or equivalent name of any particular Scheduled caste, either Badhi or Lohar. In view thereof, this office does not support the proposal of inclusion of Tarkhan in the SCs list of Himachal Pradesh."

The National Commission for the Scheduled Castes in its meeting held on 21.9.2004 had also rejected the proposal of the State Government which reads thus:

> "The Commission considered the proposal of the Government of Himachal Pradesh for inclusion of Tarkhan community/caste in the list of Scheduled Castes of the State Government. The Commission noted that RGI in their report had inter-alia stated that

> un-touchability, which is the prime element for consideration for social disability suffered by the community for inclusion in the lists of SCs was not practiced towards Tarkhan community in the State of Himachal Pradesh. The Commission accordingly decided not to agree with the proposal of modifying the SCs list of Himachal Pradesh with the inclusion of Tarkhan community/caste."

It is evident from clause (f) of the Revised Modalities as on 25.6.2002 that in case of claims recommended by the concerned State Governments/Union Territory Administrations are not agreed to by the Registrar General of India the concerned State Governments would be asked to review and further justify their recommendations in the light of comments of the Registrar General of India. Thereafter on receipt of the further clarification from the State Government the proposal is required to be referred to the Registrar General of India for comments. Where the Registrar General of India does not agree to the point of view of the State Government on a second reference, the Government of India may consider rejection of the said proposal. In the present case para (f) of revised modalities has not been complied with by the respondents No.1 and 3. Once the Registrar General of India has not agreed to the proposal of the State Government dated 15.2.2001 the matter was required to be sent to the State Government for review and further justifying its recommendations. Thereafter the matter was required to be referred to

the Registrar General of India for taking appropriate action as per clause (f) of the Revised Modalities.

Accordingly the writ petition is disposed of in view of the observations made here in above by issuing the following binding directions to the respondents:

The respondent No.2 is directed to send its comments dated 1.12.2003 to respondent No.3 as per para (f) of Revised Modalities for deciding claims for inclusion in and exclusion from and other modifications in the orders specifying Scheduled Castes and scheduled Tribes lists (revised on 25.6.2002) within a period of eight weeks from today to review and justify the recommendations. The respondent No.3 is directed to take appropriate decision on the basis of the observations contained in letter dated 1.12.2003 within a period of eight weeks from the receipt of the communication from the office of the Registrar General of India and to resubmit the same to the Registrar General of India. The Registrar General of India will take appropriate decision on the basis of the fresh recommendations made by the State Government within a period of eight weeks after its receipt. The Registrar General of India, if takes the decision in favour of the petitioner, the same will thereafter be placed before the National Commission for Scheduled Castes within a period of six weeks. The National Commission for Scheduled Castes will take final decision within a period of eight weeks from the receipt of the recommendations from the Registrar General of India. The National Commission for Scheduled Castes, if agrees with the recommendations of the Registrar General of India, the matter will be put up for inter-ministerial consultation as well as for the approval of the Central Government for doing the needful in accordance with law. No order as to costs.

November 7, 2007 (g) **(Rajiv Sharma), J.**